IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-552

MITSUI & CO., LTD., ET AL.,
Petitioners,

v.

INDUSTRIAL INVESTMENT DEVELOPMENT CORPORATION, ET AL.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Respondents Industrial Investment Development Corporation, Indonesia Industrial Investment Corporation, Ltd., and Forest Products Corporation, Ltd., file this Brief opposing the Petition for a Writ of Certiorari filed by Mitsui and Co., Ltd. ("Mitsui Japan"), and Mitsui & Co. (U.S.A.) ("Mitsui USA"). Consistent with their status in the trial court, Petitioners will be referred to herein as "Defendants" while Respondents will be called "Plaintiffs".

QUESTIONS PRESENTED

DOES THE ACT OF STATE DOCTRINE PROHIBIT AN INJURED PLAINTIFF FROM SHOWING HE COULD HAVE QUALIFIED TO DO BUSINESS IN THE FOREIGN MARKET HE SOUGHT TO ENTER?

DOES THE ACT OF STATE DOCTRINE REQUIRE JUDICIAL ABSTENTION WHEN VIOLATIONS OF UNITED STATES LAW HAVE OCCURRED ON UNITED STATES' SOIL?

STATEMENT

With each new brief, Defendants' summary of the facts sounds more and more like *Hunt* v. *Mobil Oil Co.*[1] — but less and less like the case actually presented by the record and decided by the Court of Appeals. In their Petition the matters which Defendants omit from their "Statement" and ignore in their argument are not just important, but controlling. The injury in this case was the destruction of a valuable commercial enterprise by the direct action of an American and Japanese corporation, and their actions included violations of the United States' law on its own territory. The case does not involve, as Defendants suggest, an injury caused by the inducement or instigation of foreign governmental conduct.

Defendants' "Statement" is also plainly in error in its description of the decision of the Court of Appeals. That Court did not "explicitly reject" *Hunt* v. *Mobil Oil Co.*, as Defendants claim.[2] It distinguished *Hunt*, and reversed the trial court, because of the very facts Defendants omitted from their petition.

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[1] 550 F.2d 68 (2nd Cir.), *cert. denied* 432 U.S. 904 (1977).

[2] Petition for Writ of Certiorari ("Petition"), p. 6.

Since the significance of Defendants' editorial deletions can best be understood in context, Plaintiffs must briefly restate the events which are established by the record and which are the basis of the decision below.

In February of 1970, the Indonesian government awarded a substantial timber concession to P. T. Telaga Mas Kalimantan Company, an Indonesian corporation.[3] In December of 1970, Telaga Mas entered a formal agreement with Forest Products Corporation of Delaware, the American Plaintiff's corporate predecessor.[4] This agreement established an unincorporated joint venture which was to operate the northern three-fourths of Telaga Mas' concession and created a fiduciary relationship between Plaintiffs and Telaga Mas.[5]

The proposed joint operation required government approval, which was obtained on July 1, 1971, when the Indonesian government executed an agreement with the joint venture between Plaintiffs and Telaga Mas (described jointly as "the Company").[6] The July 1, 1971, agreement set forth the capital, organizational and other requirements which the Forest Products-Telaga Mas joint venture had to meet before actually beginning operations.[7] The July 1,

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[3] Industrial Investment Development Corp. v. Mitsui & Co., Ltd., 594 F.2d 48, 50 (5th Cir. 1979). Second Amended Complaint, ("Complaint"). §§ 26, 27, Rec. pp. 393, 394; see also Rec. No. 69, pp. 577-97. For explanation of references to the record, see "Note," Appendix A.

[4] 594 F.2d at 50; Complaint § 27, Rec. p. 393, Rec. No. 75, pp. 197-211.

[5] 594 F.2d at 50; Rec. No. 75, p. 197-211, Art III, § (7), (8), p. 201; Art IV § (3), p. 202; Complaint § 28, Rec. p. 393; Aff. of Gautama, § 4, Rec. No. 75, p. 159-160.

[6] 594 F.2d at 50; Complaint § 33, Rec. pp. 395, 396; Agreement of July 1, 1971, No. FA/J/031/VII/1971 ("July 1 Agr."), Rec. No. 75, pp. 212-25; Aff. of Gautama, § 5, Rec. No. 75, p. 160.

[7] 594 F.2d at 50; July 1 Agr, Art 5, 6, Rec. No. 75, p. 215.

1971, agreement also required the continued existence of that joint venture which was to perform the contract and receive a cutting license. Without the continued cooperation of the two private parties to the joint venture, the July 1 agreement could not be performed.[8]

The Mitsui Defendants were prior purchasers from and creditors of Telaga Mas.[9] They had known of the joint venture between Telaga Mas and Plaintiffs since at least February of 1971 and had no objection to it.[10] However, when timber prices increased, and large quantities of agathis timber were discovered on the joint venture's portion of the concession, the Mitsui Defendants decided to block the joint venture and place Telaga Mas' entire concession under Mitsui's supervision and control.[11] Defendants did not induce the government to cancel the concession; instead they acted independently and through private parties to make joint operation of the concession impossible.[12] In fact, the involvement of the Mitsui Defendants was kept a deliberate secret both from the government and from Plaintiffs.[13]

Defendants first encouraged Harianto, an officer of Telaga Mas and a named co-conspirator in this case, to

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[8] 594 F.2d at 50; Aff. of Gautama, § 5, Rec. No. 75, pp. 160-1.

[9] 594 F.2d at 50; Complaint § 30, Rec. p. 395; Mitsui-USA Amended Answers to Plaintiffs' First Set of Interrogatories, Nos. 9, 11, 26, Rec. pp. 497-98, 500-04, 507.

[10] Telex from Jakarta to Tokyo dated Nov. 5, 1971, Rec. No. 75, p. 91.

[11] 594 F.2d at 50; Complaint §§ 43-46, Rec. pp. 399-401; the evidence is summarized at notes 35 through 38, Brief of Appellants, p. 7.

[12] 594 F.2d at 50; for detailed references to the evidence, see Brief of Appellants footnotes 39-56, pp. 8-11, and accompanying text.

[13] 594 F.2d at 50; Telex from Tokyo to Jakarta dated May 10, 1972; Rec. No. 75, pp. 37-38; Telex from Tokyo to Jakarta dated March 31, 1972, Rec. No. 75, p. 42.

object to the July 1, 1971, agreement on the theory that Sadjarwo, the officer who had executed it on behalf of Telaga Mas, lacked authority to do so. A "shareholders' meeting" and two *ex parte* court decrees were used to bolster Defendants' position. Defendants finally arranged for their co-conspirator Harianto to purchase Sadjarwo's interest in Telaga Mas, to assume exclusive control of that firm, and to cause Telaga Mas to breach its agreement with Plaintiffs.[14] As Defendants recognize, this takeover by Defendants signalled the demise of the joint venture.[15] The Mitsui Defendants then gave Telaga Mas a $350,000 loan. The funds were furnished by Mitsui-USA, a New York corporation, which entered an exclusive-dealing agreement with Telaga Mas. After destruction of the joint venture, all production from the entire concession area was sold to the Houston, Texas, office of Mitsui-USA. The purchases were made with funds provided from American banks after receipt of shipping documents in Houston. The logs were then resold, at a profit, to Mitsui-Japan.[16]

During the year 1972 the Director General of Forestry attempted to mediate the dispute as to Telaga Mas' participation in the July 1, 1971, agreement. Harianto was persuaded by the Mitsui Defendants to "botch the whole talk by asking unreasonable demands."[17] In February of 1973, nearly a year after the destruction of the joint venture, the Director General finally "cancelled and affirmed invalid" the July 1 agreement.[18] He gave his reasons in the

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[14] 594 F.2d at 50; detailed references to the evidence are given in Brief of Appellants, fn. 42-56, pp. 8-11.

[15] In Defendants' opening brief in the Trial Court they stated that the buy out of Sadjarwo is "what really killed the deal for Plaintiffs." See Rec. No. 67, p. 25, fn. 73.

[16] See note 14, supra.

[17] Memo from Jakarta to Tokyo dated March 28, 1972, Rec. No. 75, pp. 46-48.

[18] Letter dated February 19, 1973, Rec. No. 75, p. 352.

cancellation letter: (1) the *ex parte* court decisions (later vacated) declaring the agreement not binding on Telaga Mas; and (2) the dispute between the officers and shareholders as to Sadjarwo's original execution of that agreement.[19] He did not "withdraw approval" either of Plaintiffs or of the proposed operation, however, and he invited the parties to execute a new agreement under the Foreign Investment Act.[20] Even after cancellation of the July 1 agreement, the Director General repeatedly confirmed that if the joint venture partners could resolve their differences, the proposed operation would be permitted.[21] However, despite the reversal of the *ex parte* decree declaring the July 1 agreement was not binding, Telaga Mas, now under Mitsui domination, still refused to honor its agreements or participate in the joint venture with Plaintiffs.[22]

REASONS THE WRIT SHOULD BE DENIED

(1) The Decision below was based on well-established principles and presents no new question for this Court's review.

Defendants seek Supreme Court review of this case in order to resolve a purely theoretical dispute as to whether the improper motivation of a foreign sovereign may serve as the basis of a claim when the legal invalidity of that sovereign's acts may not. The first reason that Defendants' petition should be denied is that the question they would have this Court answer is neither presented by the record nor the basis of the decision below. That decision resulted from the facts of this case, and those facts, although them-

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[19] *Id.*

[20] 594 F.2d at 6; Rec. No. 75, p. 352.

[21] State Department Memo dated, Nov. 20, 1975, Rec. No. 75, pp. 179-180. See Brief of Appellants, notes 72 and 73, pp. 15-16, and accompanying text.

[22] 594 F.2d at 6; Complaint § 61, Rec. pp. 407, 408.

selves complex, present no new question. The Court of Appeals refused to sustain Defendants' act of state defense because to do so would have required rejection of the principles of *Banco Nacional de Cuba* v. *Sabbatino*[23] and *Alfred Dunhill of London, Inc.* v. *Republic of Cuba*,[24] and of the holdings of *United States* v. *Sisal Sales Corp.* [25] and *Continental Ore Co.* v. *Union Carbide Corp.*[26] The act of state doctrine does not apply here because *neither* the motivation *nor* the validity of a sovereign act is the basis of the dispute between these parties. On the contrary, that dispute arose wholly out of the destruction of a commercial entity by the unaided misconduct of private defendants, some of whose acts occurred within the United States itself.

(a) *No act of state issue is raised because Indonesia had no connection with the injury.*

The most efficient way to demonstrate the irrelevance of the Indonesian government — and of the act of state doctrine — to the instant dispute is by the comparison of two simplified examples.

In the first example, A attempts to start a taxicab business in a foreign country. To do so, he needs a driver's license, and applies for one. B, a competing cabdriver, bribes or otherwise persuades the licensing authority to deny A's license. Although it is a harsh result, it is established that A's suit against B would be barred by the act of state doctrine. E.g., *American Banana Co.* v. *United Fruit Co.*[26a]; *Hunt* v. *Mobil Oil Co., Occidental Petroleum Corp.* v. *Buttes Gas & Oil Co.*[26b]

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[23] 376 U.S. 398 (1964), Cited and discussed by the Court of Appeals, 594 F.2d at 51-52.

[24] 425 U.S. 682 (1976), cited and discussed 594 F.2d at 52.

[25] 274 U.S. 268 (1926), cited and discussed 594 F.2d at 52-53.

[26] 370 U.S. 690 (1962), cited and discussed 594 F.2d at 53, 55.

[26a] 213 U.S. 347 (1909).

[26b] 331 F.Supp. 92 (C.D. Cal. 1971), *aff'd* 461 F.2d 1261 (9th Cir. 1972).

Suppose, however, that B instead decides to block A's entry by simply running over him with a taxicab. A is paralyzed and can no longer drive a cab. The license bureau, neither involved in nor aware of B's misconduct, suspends A's license application for the express reason that he is no longer physically qualified for one. A sues B for damages resulting from his injury, including lost future earnings in the taxicab business. No case has ever allowed an act of state defense in this situation.

The second example is a perfect parallel to the case before this Court.[27] Here Defendants argue that they merely "induced" the Indonesian government to deny a license, but their "inducement" consisted of destroying the entity which was to receive that license. Here Defendants concede that, as in the second example, Plaintiffs' ability to do business had already been destroyed before the government did anything at all.[28] And here both Defendants and Plaintiffs concede that the Indonesian government has a perfect right to set whatever qualifications it wishes for doing business in that country and that after the injury Plaintiffs were no longer able to meet them.[29]

Defendants argued below that the act of state doctrine bars a suit against them for destruction of a private commercial enterprise without the aid, approval, or even knowledge of the foreign state. The argument ignores the crucial event — Defendants' destruction of Plaintiffs' busi-

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[27] Defendants argued below that the example involves a driver's license rather than a cutting license. Brief of Appellees, pp. 19-20. There is one difference: here Plaintiffs were "run over" within the United States.

[28] Rec. No. 67, p. 25, fn. 73.

[29] 594 F.2d at 53-54.

ness.[30] Defendants then confuse the "fact of damage" or injury with the measure of damages or value of the property injured, insisting that there was no injury to Plaintiffs (or to the taxidriver) until Plaintiffs failed to receive profits from the business Defendants had destroyed.[31] Finally Defendants extract from the opinion in *Hunt* v. *Mobil Oil Co.* the statements that the fact of damage could not be established in *that* case without also showing that the defendants had induced the nationalization of plaintiff's property and that *there* such a showing was barred by the act of state doctrine.[32] Defendants conclude that a government act which occurred in 1973 caused an injury which they admit occurred in 1972 and that *Hunt* therefore precludes recovery.

The Court of Appeals rejected Defendants' argument as to the requirements of Section 4 of the Clayton Act[33] because it was contrary to this Court's decision in *Zenith Radio Corp.* v. *Hazeltine Research, Inc.*[34]. Its decision on the act of state issue was instead based on an analysis of what had actually occurred and the established principles of the act of state doctrine.

The principles applied were derived from this Court's opinions in *Sabbatino* and *Dunhill.* The act of state doctrine, although not constitutionally compelled, has constitutional underpinnings. It rests upon the separation of powers in our system of government.[35] Cases in which the

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[30] Below Defendants' "Statement of Facts" ignored the nature, effect, and location of their anticompetitive acts altogether. See Brief of Appellees, pp. 5-14.

[31] For example, see Brief of Appellees, p. 26, where they state Section 4 requires that Plaintiffs prove "the *damages* they assert," including lost profits, to even establish a claim.

[32] *Eg.* Brief of Appellees, pp. 25-28.

[33] 15 U.S.C. § 15.

[34] 395 U.S. 100 (1969), cited and discussed at 594 F.2d 55.

[35] 594 F.2d at 51; quoting *Sabbatino* and *Dunhill.*

plaintiffs' claim requires passing on the validity of the sovereign acts of foreign governments create an unacceptable potential for interference with the executive's conduct of foreign relations and suggest the abstention of the judiciary.[36]

The decision of the Court of Appeals was that the factors which had required act of state abstention in other cases were absent here.[37] Plaintiffs' claim did not depend upon a judicial determination of the propriety, validity, or motivation of some government act.[38] The suit did not arise out of a nationalization of property.[39] Nor is it based on the inducement of improper governmental conduct.[40] Instead, Plaintiffs sought protection of their right to participate in American foreign trade without the direct predatory interference of private corporations.

The Court of Appeals recognized the vital distinction between an act of state situation and the case at bar, and the decision below was based on the crucial facts of this case: Defendants *did not* destroy Plaintiffs' business by inducing foreign state action; they *did* destroy it by their own direct misconduct.[41] This case simply does not revolve around what the Indonesian government did or why. Judging the propriety of the acts or policies of foreign nations is properly left to the Executive Branch, but this case does not involve that question either directly or by implication. The Court of Appeals found that it was not called upon to scrutinize the integrity of any governmental act, and, indeed, that "no ethical standard is set by which the propriety

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[36] 594 F.2d at 51.
[37] *Id* at 53.
[38] *Id* at 54-55.
[39] *Id* at 54.
[40] *Id* at 54-55, n. 11.
[41] *Id* at 52-54.

of Indonesia's decision is tested."[42] The decision below was not based on a semantic distinction between motivation and validity. The Court refused to apply the act of state doctrine because the factors which suggest abstention in deference to the Executive, and which are prerequisites of the act of state defense, are simply not present in the case at bar.

(b) *The occurrence of violations of American law within the United States precludes act of state abstention.*

The Court of Appeals in this case also noted that the *Sabbatino* opinion refuses to establish "an inflexible and all-encompassing rule,"[43] but instead "declared a less-brittle doctrine" capable of balancing executive and judicial concerns.[44] When the Court below balanced those concerns in the instant case, the result was particularly clear — for not only is the sensitive issue of validity notably absent, but there are very strong policy reasons which compel judicial action.

First, this is an antitrust action which involves two American corporations and which arises out of American foreign commerce, and "(t)he courts are an important forum for protection against competitive restraints."[45] Second, Plaintiffs seek redress for misconduct which occurred within the United States itself.[46] In giving controlling weight to these factors the court below properly followed the holdings of this Court in *United States* v. *Sisal Sales Corp.*[47] and *Continental Ore.* v. *Union Carbide.*[48] In *Sisal,* the defendants' attempt to establish a monopoly included procuring discriminatory foreign legislation. An act

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[42] *Id* at 55.
[43] *Id* at 51; *quoting Sabbatino,* 376 U.S. at 428.
[44] *Id.*
[45] *Id* at 55.
[46] *Id* at 53.
[47] 370 U.S. 690 (1962).
[48] 274 U.S. 268 (1926).

of state defense was denied because their conspiracy was not limited to the instigation of action by a foreign government, but included "violation of their [the United States'] laws within their own territory by parties subject to their jurisdiction . . . ."[49] In *Continental Ore*, the conspiracy involved the exclusive purchasing agent for the Canadian government. This Court again refused to apply the act of state doctrine, and for the same reasons.

> As in *Sisal*, the conspiracy was laid in the United States, was effectuated both here and abroad, and respondents are not insulated by the fact that their conspiracy involved some acts by the agent of a foreign government. 370 U.S. at 706.

In the *Sisal* case, this Court found that the necessity of regulating the anticompetitive conduct of private parties, particularly on American soil, precluded act of state abstention even where the validity of foreign sovereign conduct was in issue. It is even more apparent that such a defense must be refused in the instant case since the issue of validity is not raised. In rejecting Defendants' act of state contentions, the Court of Appeals merely followed the established and inevitable precedents set by this Court.[50] To have done otherwise would be to allow a foreign sovereign to grant to private parties the right to disobey United States' law within the United States, a result which our courts cannot permit.

(c) *This case does not even involve conduct of a sovereign nature.*

Although the Court of Appeals did not reach the question, its decision is also supported by the fact that no action

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[49] 274 U.S. at 276.
[50] 594 F.2d at 51-53.

of the Indonesian government in this case was of the sovereign nature required for an act of state abstention. The July 1 agreement,[51] which establishes the nature of Indonesia's relationship to this case, contains an arbitration provision[52] and binding obligations on the part of the government.[53] Both by treaty[54] and by this agreement the Indonesian government elected to assume the burdens of a private party and to waive whatever immunity would otherwise be available. Even had it not made such an election, its actions related entirely to a dispute between private parties and were not of the public character necessary to establish an act of state defense.[55]

(2) This case does not present a conflict between the Circuits.

Because of important factual and legal differences, the court below properly distinguished the decision of the Second Circuit in *Hunt* v. *Mobil Oil Co.* That case arose out of the nationalization of the plaintiff's oil concession by the Libyan government. Two of the plaintiff's claims were directed to the independent misconduct of the defendant oil companies, and an act of state defense to those claims was refused.[56] The third claim was that the defendants had caused Libya's nationalization by the way they conducted negotiations. The plaintiff conceded he had not

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[51] July 1 Agr., Rec. No. 75, pp. 212-225.

[52] *Id* at 224. (art 17(3)).

[53] *Id* at 222. (Art. 14).

[54] Convention for Settlement of Investment Disputes, Mar. 18, 1965, 17 U.S.T. pt. 1, p. 1270, T.I.A.S. No. 6090.

[55] Aff. of Gautama, § 10, Rec. No. 75, pp. 166-169; *Alfred Dunhill of London* v. *Republic of Cuba*, 425 U.S. 682 (1976); *Timberlane Lumber Co.* v. *Bank of America*, 549 F.2d 597 (9th Cir. 1976).

[56] Hunt v. Mobil Oil Co., 410 F.Supp. 10, (S.D.N.Y. 1976) aff'd 550 F.2d 68 (2nd Cir.), *cert. denied* 432 U.S. 904 (1977).

suffered any injury at all from the conspiracy itself.[57] He could establish "the fact of damage" only by showing that defendants had induced Libya's act and this necessarily raised the question of its validity.[58]

The only difference between *Hunt* and the other "inducement" cases is that Hunt sought to plead around the issue by alleging that defendants had induced a *valid* act. The differences between *Hunt* and this case, however, are numerous:

(i) In *Hunt*, the inducement of a government act had to be shown to establish any injury at all, i.e., the "fact of damage." Thus, if the injury was caused by a restraint, by implication that restraint had to be the act of Libya. In the instant case the government act is only relevant on the *measure* of damages and had no connection with the injury: "Whether the Indonesian government would have issued a cutting license is relevant only to the value of the destroyed joint venture, not to liability for its destruction."[59] Defendants sought to avoid this controlling distinction by arguing that the antitrust acts require a plaintiff to show the value of the property destroyed, or the measure of damages, to establish liability.[60] This argument was rejected by the Fifth Circuit as contrary to *Zenith Radio Corp.* v. *Hazeltine Research, Inc.*[61]

(ii) The *Hunt* case does not involve an injury caused by the independent acts of private parties or misconduct within the United States. The decision of this Court in *Sisal*, therefore, was not controlling there. The *Hunt* court

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[57] 550 F.2d at 76.
[58] *Id* at 77.
[59] 594 F.2d at 54.
[60] See note 31, *supra*.
[61] 395 U.S. 100 (1969), discussed at 594 F.2d 16.

merely rejected an argument that the *Sisal* decision *abolished* the act of state doctrine.[62]

(iii) The *Hunt* case involved an expropriation of plaintiff's property in an openly political confrontation.[63] The instant case involved the failure of the government to issue a license under an agreement which Plaintiffs were prevented from performing by Defendants' misconduct.[64]

The Court below distinguished *Hunt* on the basis of these factual differences. All that the Court of Appeals "explicitly rejected"[65] was Defendants' analysis of that case — Defendants argued that the Court in *Hunt* intended to establish the very "inflexible and all-encompassing rule" which this Court has deliberately avoided.[66] Defendants insisted that the *Hunt* court intended to state, as universal rules, that motivation and validity are always the same, that a plaintiff must establish defendant's conduct as the sole cause of damage, and that the act of state doctrine precludes evidence as to the amount of damage. The Court of Appeals agreed with the *Hunt* decision, but concluded that if the language of the opinion was intended to support these doubtful propositions, it was not only dictum, but wrong.[67]

(3) This case is not sufficiently developed for Supreme Court review and a decision on the act of state issue would not dispose of the litigation.

Although the act of state doctrine is a "vital tool of judicial abstention in the field of foreign relations,"[68] its

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[62] 550 F.2d at 74.
[63] See 594 F.2d at 55, note 11.
[64] 594 F.2d at 54.
[65] Petition, p. 6.
[66] 376 U.S. at 428.
[67] 594 F.2d at 54-55.
[68] *Id* at 55.

results are often harsh, and neither the judicial, legislative nor executive branches have shown any inclination to enlarge its scope. By their petition, Defendants ask a major revision and expansion of this defense. They argue that it should be construed as a mandatory evidentiary rule, and that it should provide immunity for conduct in violation of the antitrust laws occurring within the United States. Moreover, Defendants ask that this Court undertake this major policy revision in the middle of a complex lawsuit, not only before a trial, but before Defendants have been deposed.

Plaintiffs submit that such a radical alteration in precedent should not be undertaken when so many related issues remain undeveloped. In addition, a ruling by this Court on the act of state defense is not necessary for further decision of the case, and would not be dispositive of the litigation. Defendants conceded in the court below that even under their theory, the defense would not apply to the Plaintiffs' tort claims,[69] of which the federal courts have both pendent and diversity jurisdiction. Thus, a grant of certiorari at this time would require decision of important policy matters on an incomplete record, would preclude the decision by this Court of other complex issues not yet sufficiently developed, and would impede rather than aid a final disposition of the litigation.

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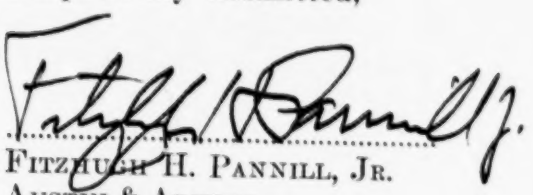
[69] Brief of Appellees, pp. 3, 4, 25, 26.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,



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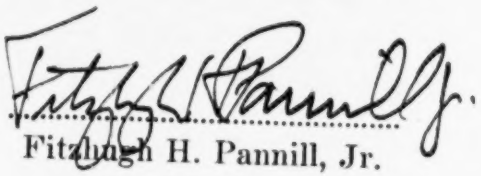
CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Brief in Opposition to Petition for a Writ of Certiorari have been delivered to the attorney for Petitioners, Mr. B. J. Bradshaw, Fulbright and Jaworski, 800 Bank of the Southwest Building, Houston, Texas 77002, on November 2, 1979.



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APPENDIX A

NOTE ON RECORD REFERENCES

Plaintiffs have used the same record references used in the Court of Appeals except that descriptions of the documents ("Plaintiffs' Trial Appendix", etc.) are usually deleted. Where the evidence involves a large number of documents, the Court is referred to the "Statement of Facts" in the Brief of Appellants, which contains a much more detailed factual treatment than is possible here.

Documents which have been included in the bound record will be referred to by the District Clerk's page numbers. All other documents are referred to by the exhibit number assigned by the District Clerk ("Rec. No."). The bulk of the relevant evidence in this case is from the business records of the parties and witnesses, which were submitted to the trial court in the form of appendices to the trial briefs. The pages of Defendants' appendix are numbered consecutively with numbers prefixed by the letter "A," and are referred to as "Def. Trial App. p.A . . .," etc. Pages in Plaintiffs' Trial Appendix are numbered consecutively without a letter prefix. Numbers on documents which begin with any letter other than "A" refer to the production numbers assigned by counsel for the business records of various parties and witnesses: F — Plaintiffs; J — Mitsui-Japan; U — Mitsui-USA; S — U.S. State Dept.; E — U.S. Export and Import Bank; W — Wheat First Securities.